

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

SENATE BILL 64

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Steve Komadina

AN ACT

RELATING TO JURY SERVICE; CREATING THE LENGTHY TRIAL FUND;  
PROVIDING FOR EXEMPTION, POSTPONEMENT AND EXCUSE FROM JURY  
SERVICE; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978;  
MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of Chapter 34, Article 9 NMSA  
1978 is enacted to read:

"NEW MATERIAL LENGTHY TRIAL FUND CREATED--  
ADMINISTRATION-- DISTRIBUTION. --

A. The "lengthy trial fund" is created in the state  
treasury and shall be administered by the administrative office  
of the courts.

B. All balances in the lengthy trial fund may be  
expended only upon appropriation by the legislature to the

underscored material = new  
[bracketed material] = delete

underscored material = new  
[bracketed material] = delete

1 administrative office of the courts for the purpose of making  
2 payments to jurors as provided in this section.

3 C. Each trial court in the state shall collect from  
4 each attorney who files a civil case, unless otherwise exempted  
5 under the provisions of this section, a fee per case,  
6 established by the supreme court, to be paid into the lengthy  
7 trial fund. An attorney will be deemed to have "filed a case"  
8 at the time the first pleading or other filing on which an  
9 individual attorney's name appears is submitted to the court  
10 for filing.

11 D. The administrative office of the courts:

12 (1) shall use the fees deposited in the  
13 lengthy trial fund to pay wage replacement or supplementation  
14 to any petit juror in civil litigation otherwise eligible to be  
15 excused from service due to financial hardship as determined  
16 pursuant to Section 6 of this 2005 act beginning on the fourth  
17 day of service. The amount paid from the fund shall be no more  
18 than is needed to relieve such financial hardship and shall not  
19 exceed one hundred dollars (\$100) per day per juror;

20 (2) shall use the fees deposited in the  
21 lengthy trial fund to pay wage replacement or supplementation,  
22 not to exceed five hundred dollars (\$500) per day, to any petit  
23 juror beginning on the tenth day of service; and

24 (3) may limit the amount of disbursements from  
25 the lengthy trial fund based on the availability of money in

underscored material = new  
[bracketed material] = delete

1 the fund.

2 E. A juror who is serving or has served on a jury  
3 who qualifies for payment from the lengthy trial fund, provided  
4 the service commenced on or after the effective date of this  
5 act, may submit a request for payment from the lengthy trial  
6 fund on a form that the administrative office of the courts  
7 provides. The form shall disclose the juror's regular wages,  
8 the amount the employer will pay during the term of jury  
9 service, the amount of replacement or supplemental wages  
10 requested and any other information the administrative office  
11 of the courts deems necessary for proper payment. The juror  
12 also shall be required to submit to the administrative office  
13 of the courts the juror's most recent earnings statement or  
14 similar document prior to initiation of payment from the  
15 lengthy trial fund. If a juror is self-employed or receives  
16 compensation other than wages, the juror shall provide a sworn  
17 affidavit attesting to the juror's approximate gross weekly  
18 income, together with such other information as the  
19 administrative office of the courts may require, in order to  
20 verify weekly income. Payment shall be limited to the  
21 difference between the state-paid jury fee and the actual  
22 amount of wages a juror earns, up to the maximum level payable,  
23 minus any amount the juror actually receives from an employer  
24 during the same period.

25 F. The following are exempt from payment of the

. 152862. 1

underscored material = new  
[bracketed material] = delete

1 lengthy trial fund fee:

- 2 (1) government attorneys appearing in the  
3 course of their official duties;  
4 (2) pro se litigants;  
5 (3) cases in small claims court; or  
6 (4) claims seeking social security disability  
7 determinations; individual veteran's compensation or disability  
8 determinations; recoupment actions for government-backed  
9 educational loans or mortgages; child custody and support  
10 cases; actions brought in forma pauperis; and any other filings  
11 designated by rule that involve minimal use of court resources  
12 and that customarily are not afforded the opportunity for a  
13 trial by jury.

14 G. All lengthy trial fees that the courts collect  
15 and interest earned on money in the lengthy trial fund shall be  
16 credited to the fund. Payments shall be made upon  
17 certification by judicial agencies of eligible amounts. No  
18 part of the fund shall revert at the end of a fiscal year.

19 H. Payments from the lengthy trial fund shall be  
20 made upon vouchers issued and signed by the director of the  
21 administrative office of the courts or the director's designee  
22 upon warrants drawn by the secretary of finance and  
23 administration. "

24 Section 2. Section 38-5-2 NMSA 1978 (being Laws 1973,  
25 Chapter 150, Section 1, as amended) is amended to read:

. 152862. 1

1 "38-5-2. ~~[EXEMPTION]~~ EXEMPTIONS FROM JURY SERVICE. --

2 Persons who have served as members of a petit jury panel or a  
3 grand jury in either state or federal courts within the  
4 preceding thirty-six months, or persons sixty-five years of age  
5 or older, shall be exempt from sitting or serving as jurors in  
6 any of the courts of this state when they, at their option,  
7 request to be ~~[excused]~~ exempt from service by reason of the  
8 exemption granted by this section. ~~[Any other person may be~~  
9 ~~excused from jury service at the discretion of the judge upon~~  
10 ~~satisfactory evidence presented to the judge with or without~~  
11 ~~the person's personal attendance upon the court. The judge, in~~  
12 ~~his discretion, upon granting any excuse, may disallow the fees~~  
13 ~~and mileage of the person excused.]~~ The service upon any jury  
14 of any person disqualified shall, of itself, not vitiate any  
15 indictment found or any verdict rendered by that jury, unless  
16 actual injury to the person complaining of the injury is  
17 shown. "

18 Section 3. Section 38-5-11 NMSA 1978 (being Laws 1969,  
19 Chapter 222, Section 11, as amended) is amended to read:

20 "38-5-11. QUALIFYING JURY PANELS. --

21 A. The court shall empanel jurors in a random  
22 manner. The district judge or ~~[his]~~ the judge's designee or  
23 the magistrate or ~~[his]~~ the magistrate's designee shall preside  
24 over the empaneling of a petit jury panel. The district judge  
25 or ~~[his]~~ the judge's designee shall preside over the empaneling

. 152862. 1

underscored material = new  
[bracketed material] = delete

1 of the grand jury panel. Jurors who appear for service shall  
2 be questioned under oath as to their eligibility for jury  
3 service by the district judge or ~~[his]~~ the judge's designee or  
4 the magistrate or ~~[his]~~ the magistrate's designee. Claims of  
5 exemption, requests for excuse from service or postponement of  
6 ~~[services]~~ service shall be ruled upon by the district judge or  
7 ~~[his]~~ the judge's designee or the magistrate or ~~[his]~~ the  
8 magistrate's designee.

9 ~~[B. A district judge or his designee or magistrate~~  
10 ~~or his designee may excuse, exclude or postpone the services of~~  
11 ~~any person called as a juror on the basis of:-~~

12 ~~(1) physical or mental illness of the person~~  
13 ~~or within his immediate family;~~

14 ~~(2) a written request from the person's~~  
15 ~~employer for excuse on the ground that his services are~~  
16 ~~essential; or~~

17 ~~(3) the person's prior business, professional~~  
18 ~~or educational commitments which conflict with jury service,~~  
19 ~~proven to the satisfaction of the district judge or his~~  
20 ~~designee or magistrate or his designee.~~

21 ~~C.]~~ B. The district judge or ~~[his]~~ the judge's  
22 designee or the magistrate or ~~[his]~~ the magistrate's designee  
23 shall submit questionnaires to prospective jurors to obtain any  
24 information that will aid the court in ruling on requests for  
25 exemption or excuse from service or postponement of service or

underscored material = new  
[bracketed material] = delete

1 that will aid the court or parties in voir dire examination of  
2 jurors or in determining a juror's qualifications to serve on a  
3 particular petit jury panel, trial jury or grand jury. The  
4 district judge or ~~[his]~~ the judge's designee or the magistrate  
5 or ~~[his]~~ the magistrate's designee shall certify a numbered  
6 list of the jury panel members' names when qualified. The  
7 certified list of jurors and the questionnaires obtained from  
8 jurors shall be made available for inspection and copying by  
9 any party to any pending proceeding or ~~[their]~~ any party's  
10 attorney or to any person having good cause for access to the  
11 list and the questionnaires. "

12 Section 4. Section 38-5-12 NMSA 1978 (being Laws 1969,  
13 Chapter 222, Section 12, as amended) is amended to read:

14 "38-5-12. PETIT JURY PANELS--NUMBER TO BE QUALIFIED--  
15 PERIOD OF SERVICE--~~[EXEMPTION]~~ TIME FOR SUMMONING.--The  
16 district judge shall determine the number of jurors to be  
17 summoned for service, the date and time for the appearance of  
18 jurors for qualification, the number of jurors to be qualified  
19 to provide panels of jurors for trial service, the size of  
20 trial jury panels and the length of time jurors are retained  
21 for service. Procedures such as the use of alternate jury  
22 panels should be established where appropriate to lessen the  
23 burden of jury service on persons retained on petit jury  
24 panels. ~~[No]~~ A person ~~[may]~~ shall not be required to remain as  
25 a member of a petit jury panel for longer than six months

. 152862. 1

underscored material = new  
[bracketed material] = delete

1 following qualification as a juror in any year [~~and~~]. In any  
2 judicial district having a population of more than three  
3 hundred thousand persons in the last federal decennial census,  
4 [~~no~~] a person [~~may~~] shall not be required to remain as a member  
5 of an actual jury panel for longer than six weeks in any  
6 calendar year unless the panel is engaged in a trial, nor shall  
7 [~~he~~] the person be required to remain as a member of a petit  
8 jury panel for longer than three months following qualification  
9 as a juror in any year. [~~Persons who have served as members of~~  
10 ~~a petit jury panel or a grand jury in either state or federal~~  
11 ~~courts within the preceding thirty-six months shall be exempt~~  
12 ~~from sitting or serving as jurors in any of the courts of this~~  
13 ~~state when they, at their option, request to be excused from~~  
14 ~~service.] Jurors may be drawn, summoned and qualified by the  
15 district judge at any time to supplement jury panels requiring  
16 replacement or augmentation. Petit jury panels may be  
17 qualified and ~~may~~ serve as the trial needs of the district  
18 court require without regard to court terms."~~

19 Section 5. A new section of Chapter 38, Article 5 NMSA  
20 1978 is enacted to read:

21 "[NEW MATERIAL] POSTPONEMENT OF JURY SERVICE. --

22 A. A person scheduled to appear for jury service  
23 has the right to postpone the date of initial appearance one  
24 time only. When requested, postponement shall be granted;  
25 provided that:

. 152862. 1

underscored material = new  
[bracketed material] = del etc

1 (1) the person has not previously been granted  
2 a postponement;

3 (2) the person requests the postponement; and

4 (3) prior to the court granting the  
5 postponement, the person sets with the court a date certain on  
6 which the person shall appear for jury service that is not more  
7 than six months after the date the person was originally called  
8 to serve.

9 B. The court may approve a second request for  
10 postponement of jury service only in the event of an extreme  
11 emergency, such as a death in the family, sudden grave illness,  
12 a natural disaster or a national emergency in which the person  
13 scheduled for jury service is personally involved, that could  
14 not be anticipated at the time an initial postponement was  
15 granted. Prior to the court granting a second postponement,  
16 the person shall set with the court a date certain on which the  
17 person shall appear for jury service that is not more than six  
18 months after the second postponement.

19 C. A court shall automatically postpone and  
20 reschedule the service of a person who works for an employer  
21 with five or fewer full-time employees, or their equivalent, if  
22 another employee of that employer is summoned to appear for  
23 jury service during the same period. This automatic  
24 postponement shall not affect a person's right to a  
25 postponement pursuant to Subsection A of this section.

underscored material = new  
[bracketed material] = delete

1           D. A person who fails to appear for jury service on  
2 the date scheduled or set by the court without obtaining a  
3 postponement or second postponement, as provided for in this  
4 section, is guilty of a petty misdemeanor and shall be  
5 sentenced in accordance with the provisions of Section 31-19-1  
6 NMSA 1978. "

7           Section 6. A new section of Chapter 38, Article 5 NMSA  
8 1978 is enacted to read:

9           "[NEW MATERIAL] EXCUSE FROM JURY SERVICE. --

10           A. A person scheduled to appear for jury service  
11 may apply to the court to be excused from service for a period  
12 of time determined by the court; provided that:

13                   (1) the person has a mental or physical  
14 condition that causes the person to be incapable of performing  
15 jury service. The person, or the person's personal  
16 representative, shall provide to the court documentation from a  
17 licensed medical professional verifying that a mental or  
18 physical condition renders the person unfit for jury service  
19 for a period of time not less than the period for which the  
20 excuse is requested; or

21                   (2) the person, or another person under that  
22 person's care or supervision, would suffer an undue or extreme  
23 physical or financial hardship due to the jury service. The  
24 person shall provide the court with documentation that the  
25 court finds to clearly support the request to be excused and no

underscored material = new  
[bracketed material] = delete

1 excuse may be granted without this documentation. As used in  
2 this paragraph "undue or extreme physical or financial  
3 hardship" means circumstances in which the person requesting  
4 the excuse would:

5 (a) be required to abandon another  
6 person under that person's care or supervision due to the  
7 inability to obtain an appropriate substitute caregiver during  
8 potential jury service;

9 (b) incur costs that would have a  
10 substantial adverse impact on the payment of the person's  
11 necessary daily living expenses or on another person for whom  
12 the person requesting the excuse provides the principal means  
13 of support; or

14 (c) suffer physical hardship that would  
15 result in illness or disease.

16 B. After the period of time determined by the  
17 court, a person excused from jury service shall become eligible  
18 for qualification as a juror, unless the person was excused  
19 permanently. "

20 Section 7. A new section of Chapter 38, Article 5 NMSA  
21 1978 is enacted to read:

22 "[NEW MATERIAL] RIGHTS OF JURORS. --

23 A. A person who is summoned to serve as a juror and  
24 who notifies that person's employer of the summons within a  
25 reasonable period of time after receipt and prior to appearance

1 for jury duty may not be discharged or otherwise subject to any  
2 adverse employment action as a result of that service.

3 B. An employee may not be required or requested to  
4 use annual, vacation or sick leave for time spent responding to  
5 a summons for jury duty, time spent participating in the jury  
6 selection process or for time spent actually serving on a jury.  
7 Nothing in this subsection shall be construed to require an  
8 employer to provide annual, vacation or sick leave to employees  
9 who otherwise are not entitled to such benefits under the  
10 employer's policies.

11 C. Service of prospective jurors shall be for no  
12 more than one court day in actual attendance, unless a  
13 prospective juror is selected to serve in a trial or is under  
14 consideration to serve at a trial and such consideration covers  
15 a period of two or more days. Once selected, a juror shall  
16 serve on the jury for the duration of the trial unless excused  
17 by the court. "